

## **PROPOSED AMENDED RULE 1-110**

At its November 8, 2002 meeting, the Commission tentatively approved proposed amended rule 1-110. This proposal has not been considered or approved by the Board of Governors of the State Bar of California. Tentative approval means that the proposed amended rule will not be the subject of further amendments until such time as the Chair places the rule on the Commission's agenda for consideration of transmission to the Board of Governors Committee on Regulation, Admissions and Discipline with a request that the Board Committee authorize a public comment distribution of the proposed amended rule. (Note: The issue of a rule numbering system is a topic that the Commission will consider at a future meeting.)

This document provides the following resources: (1) a clean version of proposed amended rule 1-110; (2) a comparison version of proposed amended rule 1-110 (showing changes to current rule 1-110); (3) explanatory notes; and (4) an excerpt from the Commission's November 8, 2002 meeting summary.

### **Proposed Amended Rule 1-110 Clean Version**

(As amended in accordance with the action taken at the Commission's 11/8/02 meeting.)

#### **Rule 1-110. Compliance with Conditions of Discipline and Agreements In Lieu of Discipline**

A member shall comply with the terms and conditions attached to any agreement made in lieu of discipline, disciplinary probation, and public or private reprovls.

#### **Discussion:**

Other provisions also require a member to comply with conditions of discipline. (See e.g. Bus. & Prof. Code §6068(k) & (l); Cal. Rule of Court 956(b).)

### **Proposed Amended Rule 1-110 Comparison to Current Rule**

(Underlined text is a proposed addition, strike-through text is a proposed deletion.)

#### **Rule 1-110. Compliance with Conditions of Discipline and Agreements In Lieu of Discipline—~~Disciplinary Authority of the State Bar~~**

A member shall comply with the terms and conditions attached to any agreement made in lieu of discipline, disciplinary probation, and public or private reprovls ~~or other discipline administered by the State Bar pursuant to Business and Professions Code sections 6077 and 6078 and rule 956, California Rules of Court.~~

#### **Discussion:**

Other provisions also require a member to comply with conditions of discipline. (See e.g. Bus. & Prof. Code §6068(k) & (l); Cal. Rule of Court 956(b).)

## **Explanatory Notes**

### *Title:*

The rule has been renamed to better describe the conduct the rule addresses.

### *Text:*

1. The phrase “the terms and” has been added to “conditions” to more accurately describe the scope of the member’s duty to comply under the rule.
2. The clause “any agreement made in lieu of discipline, disciplinary probation, and” has been added to “public or private reproofs” to identify with more particularity the kinds of arrangements in which terms and conditions may be imposed on the member.
3. References to sections of the Business & Professions Code and Court Rules under which sanctions may be imposed on members has been deleted in favor of a precise statement of a duty that is unaffected by changes to provisions of law outside of the rules of professional conduct.

### *Discussion:*

A discussion was added to alert members to other law (e.g., Bus. & Prof. Code §§ 6068(k), (l), and Cal. Rule of Court 956), under which terms and conditions of compliance may be imposed.

### *Comparison to ABA Model Rule of Professional Conduct:*

There is no corresponding ABA Model Rule. Rule 10(B) of the ABA Model Rules of Disciplinary Enforcement provides:

“B. Conditions. Written conditions may be attached to an admonition or a reprimand. Failure to comply with such conditions shall be grounds for reconsideration of the matter and prosecution of formal charges against the respondent.”

### *Concepts Considered but Rejected or Postponed for Future Consideration:*

At its September 13, 2002 meeting, the Commission considered a proposal to replace the concept of current rule 1-110 with the following language: “The wilful disobedience or violation of an order of any court requiring a member to do or forbear doing any act connected with or in the course of the member’s profession, which the member in good faith ought to do or forbear doing, or any violation of the member’s oath, or of the member’s duties as an attorney, shall constitute cause for disbarment, suspension, or other discipline.” Under this proposal, the language of Bus. & Prof. code section 6103 would be brought into the rules of professional conduct. Following consideration, the Commission rejected this proposal, in part, because it was unclear whether the language and concept of Bus. & Prof. code section 6103 covered a member’s failure to comply with agreements in lieu of discipline.

## **Excerpt from the Commission's October 11, 2002 Meeting Summary**

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### **III. MATTERS FOR ACTION**

#### **A. Consideration of Rule 1-110. Disciplinary Authority of the State Bar**

The Commission considered a proposed amended RPC 1-110 developed by Mr. Lamport and Mr. Voogd. After discussion, the Commission approved unanimously the following proposed rule text:

“A member shall comply with the terms and conditions attached to any agreement made in lieu of discipline, disciplinary probation, and public or private reprovls.”

Regarding a proposed rule Discussion section, some members believed that no discussion was needed given the clarity of the proposed amended rule text. Other members believed that a discussion section was needed to cross-reference other important and related law.

For the first sentence of the proposed rule Discussion section, the following text was approved by a vote of 6 yes, 3 no and 1 abstain:

“Other provisions also require a member to comply with conditions of discipline.”

For the second sentence of the proposed rule Discussion section, the following text was approved by a vote of 7 yes, 1 no and 1 abstain:

“(See e.g. Bus. & Prof. Code §6068(k) & (l); Cal. Rule of Court 956(b).)”

Regarding the reference in this language to Rule of Court 956(b), staff was asked to facilitate a communication to appropriate Supreme Court staff concerning the need to amend the rule of court to correct the existing erroneous citation to repealed RPC 9-101.

For the proposed rule title, the following text was approved by a vote of 5 yes, 1 no and 2 abstain:

“Compliance with Conditions of Discipline and Agreements in Lieu of Discipline”

Staff and Mr. Mohr were asked to work with the co-drafters to finalize the approved language and explanation for posting in the Commission's area at the State Bar website.

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General information about the Commission, including: its charter; meeting schedule; and a member-staff roster is available at the State Bar of California website. Go to: [www.calbar.ca.gov/ethics](http://www.calbar.ca.gov/ethics) and access the link to the “Commission for the Revision of the Rules of Professional Conduct.”